

Minneapolis Planning Department

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MEMORANDUM

DATE: July 17, 2003

TO: Council Member Gary Schiff, Chair, Zoning and Planning Committee
Zoning and Planning Committee members

FROM: Jim Voll - City Planning Department

SUBJECT: Appeal of the City Planning Commission's decision for property located at
514 6th Street SE (BZZ-1139).

Joseph Welp has filed an appeal of the City Planning Commission's denial of a nonconforming use certificate and an expansion of nonconforming use at its meeting of June 16, 2003. The property is located at 514 6th Street SE. The Commission voted 7 to 0 to deny the applications. The appeal was filed on June 25, 2003.

Mr. Welp applied for a nonconforming use certificate and an expansion of a nonconforming use to establish nonconforming rights, and to allow expansion of units beyond any established nonconforming rights, all for 12 rooms and 1 apartment for a total of 13 dwelling units. The Planning Commission found that there was not sufficient evidence to establish nonconforming rights and determined that the property has rights to a two-family dwelling as allowed under the R2B district.

Minneapolis City Planning Department Report

Nonconforming Use Certificate and Expansion of a Nonconforming Use (BZZ-1139)

Date: June 16, 2003

Date Application Deemed Complete: Application is not complete.

Start of 60 Day Period: March 31, 2003

End of 60 Day Decision Period: May 29, 2003

Date Extension Letter Sent: April 22, 2003

End of 120 Day Decision Period: July 28, 2003

Applicant: Joseph Welp

Address Of Property: 514 6th Street SE

Contact Person And Phone: Doug Turner, Esq. 612-338-7770

Planning Staff And Phone: Jim Voll 612-673-3887

Ward: 5 **Neighborhood Organization:** Marcy-Holmes

Existing Zoning: R2B Two-family District.

Proposed/Existing Use: The applicant is trying to establish rights to 1 apartment and 12 rooms.

Appropriate Section(s) of the Zoning Code: Chapter 531 Nonconforming Uses and Structures.

Background: The house at 514 6th Street SE is currently zoned R2B Two-family residential. It has been zoned R2B since 1986 when this area was downzoned from R3 as part of the Marcy-Holmes 40-acre study. The structure was nonconforming under the R3 zoning as well.

Joseph Welp, the applicant, has altered the building, without obtaining building permits. He is requesting a nonconforming use certificate to establish rights for 1 apartment and 12 rooms. Staff is not clear what the applicant means by rooms, but assumes it is rooming units. In addition, he is requesting an expansion of a nonconforming use permit to allow any additional units or persons over whatever nonconforming rights that are granted by the city up to the 1 apartment and 12 rooms.

A notice of violation letter was sent to Mr. Welp by the Zoning Inspections office on March 3, 2003 (see attached letter). This letter indicated that the applicant needed to show that the structure has been used as a multi-family dwelling since 1924. Planning staff has obtained building permit records (attached to this report) that indicate that the building was used for 8 tenement units (TUs), with 4 on the first floor and 4 on the second floor as late as 1962. The third floor was listed as vacant.

The term tenement unit has been used to mean different things by city staff in the past. Officially, a tenement unit had to have a kitchen, but they could have shared baths with other units. In general, the city has considered tenement units as equal to dwelling units, so the applicant could have rights to up to eight dwelling units, assuming he can show that the units were in fact tenement units and that the building has legally been used this way since 1962. If the term tenement unit was used for what was actually a rooming unit or a sleeping room, then the applicant may have rights to 8 rooming units, if he can show that the building was used this way since 1962. The applicant has provided no information that would verify the use of the structure as tenement units or rooming units.

The Housing Inspections division of the Operations and Regulatory Services Department believes that the building is being utilized as five or six separate apartments, yet the applicant has applied for a lodging license. Housing is unsure whether the structure is used as a lodging house or an apartment building. There is no record of the applicant obtaining building permits for the work performed on the structure. Currently the house is vacant, under orders from Housing Inspections.

The application is incomplete. Staff has not received any of the information requested in the incomplete letter sent to Mr. Welp and his attorney Doug Turner. This includes information on how any of the additional work could be considered legally nonconforming, information on parking, and proof that the applicant owns the property. In addition, the applicant has not provided any information that shows how the property has been used since 1962 to establish nonconforming rights.

Under the 60-day law Planning Department staff has 10 days to review an application and send an incomplete letter, or the 60-day clock starts ticking from the day the application was submitted. An incomplete letter was not sent within the 10-day review period, so the 60-day clock starts ticking from the date the application was filed, which was March 31, 2003. Staff sent an extension letter for an additional 60 days that sets the final review deadline as July 28, 2003. The Planning Commission must act (approve or deny) on this application at its meeting of June 16, 2003, unless the applicant waives his right to be heard within the 120-day period, or the application will be automatically approved. The applicant has not met with the Marcy-Holmes Neighborhood Association.

NONCONFORMING USE CERTIFICATE

Section 531.30 of the zoning code states that "the burden of proof shall be on the applicant to establish the lawful nonconforming status of the use or structure and the lack of abandonment, change of use or loss under Section 531.40. If the applicant does not establish the required facts, no certificate shall be issued."

Findings As Required By The Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and makes the following findings:

- 1. Established nonconforming rights:** The house at 514 6th Street SE is currently zoned R2B Two-family residential. It has been zoned R2B since 1986, before that it was zoned

R3 Multi-family residential. Building permit records show 8 tenement units in 1962, with 4 on the first floor and 4 on the second floor. The third floor was listed as vacant.

2. **Period between the establishment of nonconforming rights and the present:** The applicant has provided no evidence that shows that the site would be entitled to nonconforming rights beyond those that could be established in 1962. He has provided no information that would enable staff to establish nonconforming rights as of 1962. Further, the applicant has provided no information that shows that the structure has continued to be operated as it was in 1962. No building permits were pulled for work done to the structure.
3. **Nonconforming rights:** Based on the above, the Planning Department concludes the applicant has not established that the property has any nonconforming rights.

The site may be used as a two-family dwelling under the R2B Two-family zoning. Each dwelling unit may have one family as defined by the zoning ordinance.

EXPANSION OF NONCONFORMING USE

Findings as Required by the Minneapolis Zoning Code:

The Minneapolis City Planning Department has analyzed the application and makes the following findings:

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

- (1) A rezoning of the property would be inappropriate.**

This site was zoned R3 with the adoption of the 1963 zoning code. In 1988 it was downzoned to R2B as a part of the Marcy-Holmes 40-acre study. While there are multifamily properties nearby, over half of the structures on the block and across the street are single and two-family residences. There has been no change in the area that would justify rezoning the site from the R2B district after it was downzoned as part of a comprehensive study.

- (2) The enlargement, expansion, relocation, structural alteration or intensification will not be compatible with adjacent property and the neighborhood.**

While there are other nonconforming multi-family uses in the area, over half of the surrounding uses on the block and across the street are single and two-family residences. An expansion of an already nonconforming use would be out of character with the immediate neighborhood.

- (3) The enlargement, expansion, relocation, structural alteration or intensification may result in significant increases of adverse, off-site impacts such as traffic, noise, dust, odors, and parking congestion.**

The structure has been used to house more residents that would typically be allowed by the R2B district. In addition, most of the residents are adults that could reasonably be expected to own cars. The rear of the site is already completely covered by parking that does not meet zoning code requirements. It is reasonable to assume that the addition of units will increase noise, traffic, and parking congestion in the area.

- (4) The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will not improve the appearance or stability of the neighborhood.**

The addition of more units or bedrooms to this structure has not resulted in any exterior improvement to the structure or site that staff could notice that would improve the stability or appearance of the neighborhood. It is reasonable to assume that it will increase the number of vehicles in the area. The applicant has turned the entire rear of the property into a parking area that does not meet the standards of the zoning code. It is not surfaced in accordance with the code and it encroaches into the setbacks.

- (5) In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will result in the creation or presence of more dwelling units on the subject property than is allowed by the regulations of the district in which the property is located.**

The addition of bedrooms on the third floor, additional units, or any rooming units beyond the two-family dwelling would be an addition of units, unless the applicant could show nonconforming rights to these units or that the bedrooms will not be an additional unit or exceed the occupancy requirements of the zoning code. The applicant has not provided information that establishes that the rooming or tenement units have been maintained since 1962, so staff can't recommend that they are legally nonconforming. The applicant has not provided information on how the units will be utilized. The code does not allow the addition of units to a legal duplex in the R2B district or additional units to a nonconforming use, which is what the applicant is requesting in this case.

- (6) The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.**

The site is not located in the Floodway District.

- (7) The enlargement, expansion, relocation, structural alteration or intensification is consistent with the policies of the comprehensive plan.**

The land use map of the comprehensive plan does not designate a land use feature for this area, such as growth center or activity center. The comprehensive plan does not speak directly to nonconforming uses. Therefore, the plan does not have specific policies that address this particular situation. However, the plan does have several policies in Chapter 4 that relate to housing and in Chapter 9 that relate to land use regulation. Relevant policies from *The Minneapolis Plan*:

4.14 Minneapolis will maintain the quality and unique character of the city's housing stock, thus maintaining the character of the vast majority of residential blocks in the city.

Implementation Steps

Continue using high quality materials for new construction and historic preservation that reinforce long-term housing maintenance goals.

Halt the illegal stripping of abandoned or condemned properties and assign a public or non-profit agency to manage the removal and sale of historic and architectural features of these properties.

Encourage adaptive re-use, retrofit and renovation projects that make the city's housing stock competitive on the regional market.

Provide the flexibility in the city's ordinances to improve and maintain existing structures.

Ensure attractive, livable neighborhoods through increased efforts to maintain a clean environment (graffiti, street cleaning, sweeping, etc.) and through increased enforcement of housing and property maintenance codes.

Attain the greatest possible degree of enhancements to neighborhood livability when making infrastructure improvements or modifications.

Control ice and snow on city streets, alleys and pedestrian bridges.

Conduct housing complaint investigations and take corrective actions up to and including condemnation.

Ensure maintenance and cleaning services for all landscaped areas in the public right-of-way.

Ensure the maintenance of public property held by city agencies and departments.

9.21 Minneapolis will preserve and enhance the quality of living in residential neighborhoods, regulate structures and uses which may affect the character or desirability of residential areas, encourage a variety of dwelling types and locations and a range of population densities, and ensure amenities, including light, air, privacy and open space.

Implementation Steps

Apply the form and density approach within the context of a neighborhood or a site and within the framework of The Minneapolis Plan and NRP Plans when evaluating the appropriateness of development proposals for specific sites.

Limit non residential land uses allowed in low density residential areas to religious institutions, specific public facilities such as schools, libraries and parks and other non residential land uses that can be integrated with low density residential uses through proper location, site planning and facilities design.

The proposed expansion is not in conformance with these policies of the comprehensive plan. The structure and site have not been maintained in conformance with city codes. There is no evidence provided that adding additional units, rooms, or residents will improve the quality of the site or the surrounding area.

RECOMMENDATION OF THE CITY PLANNING DEPARTMENT:

NONCONFORMING USE CERTIFICATE

The City Planning Department recommends that the City Planning Commission adopt the above findings and **deny** the Nonconforming Use Certificate for one apartment and 12 rooms or rooming units or any units beyond a two-family dwelling for property located at 514 6th Street SE.

EXPANSION OF NONCONFORMING USE

The City Planning Department recommends that the City Planning Commission adopt the above findings and **deny** the expansion of a nonconforming use application to allow any units or bedrooms or any expansion beyond a two-family dwelling for property located at 514 6th Street SE.

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MEMORANDUM

DATE: June 17, 2003

TO: Blake Graham, Planning Department
Phil Schliesman, Licenses
Clara Schmit-Gonzalez, Licenses

FROM: Neil Anderson, Planning Supervisor, Development Services

CC: Chuck Ballentine, Planning Director

SUBJECT: Planning Commission decisions of June 16, 2003

The following actions were taken by the Planning Commission on June 16, 2003. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Joe Welp – BZZ-1139

19. **514 – 6th Street SE (2nd Ward, BZZ-1139)**

Joe Welp has made application for a certificate of nonconforming use to establish nonconforming rights for 12 rooms and 1 apartment for a total of 13 dwelling units at 514 6th Street S.E. (Staff, Jim Voll)

Motion: The City Planning Commission adopted the above findings and **denied** the Nonconforming Use Certificate for one apartment and 12 rooms or rooming units or any units beyond a two-family dwelling for property located at 514 6th Street SE.

20. **514 – 6th Street SE (2nd Ward, BZZ-1139)**

Joe Welp has made application for an expansion of a non-conforming use to establish non-conforming rights for 12 rooms and 1 apartment for a total of 13 dwelling units at 514 6th Street S.E. (Staff, Jim Voll)

Motion: The City Planning Commission adopted the above findings and **denied** the expansion of a nonconforming use application to allow any units or bedrooms or any expansion beyond a two-family dwelling for property located at 514 6th Street SE.

CITY PLANNING COMMISSION

317 City Hall

Minneapolis, Minnesota 55415

Hearing held on Monday, June 16, 2003

514 – 6th Street SE (5th Ward, BZZ-1139)

JimVoll presented the Staff Report.

The applicant has applied for a non-conforming use certificate with expansion of non-conforming use. The property is currently zoned R2B and is being used as a six-unit building.

Commissioner Schiff: Asked since we will probably get into a little detail can you walk us through all the supporting pieces of evidence that have been submitted and give us your professional analyzes of each one?

JimVoll: Staff indicated that in the middle of the staff report there is a letter from Mr. Welp explaining his position, and then there is a sheet from the Assessors Office, affidavit that was not signed.

The public hearing was opened

Doug Turner (Attorney, representing Mr. Welp) – 800 Washington Avenue North, Suite 320, Minneapolis 55401. Stated that regarding the application for 514 6th Street, I have had extensive conversations with Mr. Voll, and he has been very helpful. As Mr. Voll's report indicates we submitted incomplete documents and I am here to ask the Commission not to deny this application, but to allow us to continue working with the department and try to get this application complete and allow my client to get the evidence needed to approve this for one apartment and 12 roomers. We believe that the previous owner had it rented that way and we are in the process of trying to track down leases. I would ask this Commission again not to deny it, I think the department would agree to give my client more time, we would waive whatever rights we would need to in this hearing. This is not a situation where we have people living in that unit/property illegally, so we would like to have the opportunity to have some more time.

Robert Distad (neighbor of this property), residing at 611 5th Street SE, Minneapolis, 55414. Stated he would speak. There was reference in the staff report to the Marcy Holmes 40 acre study that was done in 1986. I was the chair person of the Marcy Holmes Neighborhood at that time when that study was done. This matter before you tonight is inevitable. At the time that the Marcy Neighborhood Association commenced its 40 acre study we were as a neighborhood beginning to have an excess of student rooming homes and it was clear at that point that what we needed was better units for students to live in, more expansive units, units with their own kitchens and bath rooms. As we plotted the strategy for the 40 acre study, the core part of the neighborhood was designated R2B and that included this block as well as a number of surrounding blocks and on the fringes we designated R5 and as we predicted and as the number of developers appreciated, those R5 properties have now filled in. There has been an incredible amount of housing in this neighborhood for almost anybody who wants to live there, we don't need to keep cramming units in. And that was one of the reasons why as we looked at these older properties we said what is appropriate is a neighborhood characteristic of R2B, duplexes are up and down the street, I live in a duplex myself that was condo'd a few years back.

The same is true with the house at 812 7th Street. I know you have received a lot of commentary from my neighbors, one of the letters that helps the most is the letter that came from Mr. Girard , who happens to be a neighbor right next door and with the increase in construction closer to the University of Minnesota the need for student rooming houses has greatly decreased. At this point in time to sanction what all of us who live in the neighborhood know to be a clear increase to the number of units on this property would not be playing fair with the neighborhood as well as the neighbors. I know you also have the letter from the Marcy Holmes Neighborhood Association, Mr. Wilson, I think he speaks on behalf of all of us and we believe that this request as well as the one 812 7th Street should be denied. Both in terms of the expansion, as well as the non-conforming use certificate.

Members of the Planning Commission, I am **Tom Johnson, I live at 425 6th Street SE.** As you may note, Mr. Welp has bought a number of properties within the area, two of which abut our property, one directly to the west, and one to the east along our backyard. I wish I could report to you that since he has acquired those properties that things have improved. They haven't. Point this out to you only because you might be thinking the two subject properties are somehow an exception. They are not. The same conditions that are reported by staff in this report with respect to the addition of rooms, parking out of control exist with respect to the properties that abut our properties. So this is not an exception, we know that our neighborhood is a mixed use, highly dense area, this is about the safety of tenants, having properties that are maintained and used in a way that adds to the fabric of our neighborhood, and ultimately it is also about the issue of whether or not a landlord can in defiance of the city code and city processes simply add units and when caught come to you and say, maybe I better get a variance. I am in support of the recommendations from the staff to deny and I do not see any reason the way this is coming before the Commission that the request for additional time be granted. Thank you.

President Martin: Others who wish to speak? Are there a whole bunch of folks who are basically here in favor of the staff recommendation to deny? There are a whole bunch of people basically in favor of the staff recommendation. Anyone else who would like to speak?

Gene Girard, and I am the next door neighbor at 510 6th Street SE, the author of a long letter sent to the Commission. I just wanted to make sure that everyone saw the letter. This is one of the oldest neighborhoods in Minneapolis, it is a neighborhood where many people have made some of the largest investments. That is the way we want the neighborhood to be, if there were students at the University of Minnesota begging for places to stay we could look at it in another way. When you drive by the "U" and see ten and twenty story buildings being built we know that that problem is being handled

Deborah Girard, 510 6th Street SE. I am going to talk about what happened while the building was occupied with Mr. Welp's tenants prior to today. I had to call a number of times regarding garbage, old tires, old mattresses stacked up. One time I had to call 911, I woke up in the middle of the night and there was an unattended fire on the front porch. The properties are not kept up. I was afraid there was an issue of rats that was going to develop. This is his attempt to move students or whomever he chooses to rent to, back into that property. I could have had a city inspector there once a week for problems. I hope that you will please deny his application.

My name is **Joe Welp, I am the property owner at 514 6th Street SE.** I have several properties in the area. My units contain several bedrooms. Most of the properties that I bought

are in the Marcy Holmes area, no one else wanted to buy them. Most of them were party houses and very run down. This particular property at 514 6th Street, I emptied it out and I spent about nine (9) months working on the property, probably 3 to 4 thousand hours doing cosmetic work on it. I can understand the neighborhoods complaint that they don't want a rooming house in the area and they would like to return it back to a duplex or condo, because it is an extremely nice neighborhood. I do have my entire investment and life's work invested in that neighborhood also. I would like to ask for a little more time. Listening to the neighbors, I think the best thing for this property would be to condo it. I would like someone from the Commission, to walk through all of my properties because 80-95% of them are extremely nice. So, if someone does want to take an hour out of their time, I would like to show them all of my properties. Or anyone from the neighborhood. Any questions for me?

Commissioner Schiff: Yes, I do. We have to make a decision here and what you are suppose to show us is continuous use establishing your previous right going back to 1924. We have a serious lack of information tonight, you haven't established rights to 1936, much less 1948, much less 1950, much less 1964. There is just no data here, so what would a continuation of time allow you to provide?

Joe Welp: The person that I bought the property from owned it for over thirty (30) years and he passed away. I have to try and get it from relatives and it's difficult to do. I would like to condo the property, because it sounds like the best thing for the property.

Commissioner Schiff: You can condo it today within the existing zoning, you can divide it into two units and condo it at any time. So this doesn't stop you from being able to do that.

Joe Welp: So, I would like a little more time to get a better game plan together.

Commissioner Schiff: Do you want to condo it into more units than two? Or what is your condo plan?

Joe Welp: Is the lot big enough for over two units?

Jim Voll - staff response: It needs to be over 10,000 square feet.

Joe Welp: Is it over 10,000 square feet?

Jim Voll: Staff is unsure of that?

Joe Welp: Off the top of my head I would believe it is big enough for four, but that is just a guess.

Commissioner Schiff: The property is 66 by 165.

Joe Welp: It is big enough. It is actually nine units, but four would be better.

My name is **David Hanson, and I live directly across the street at 550 6th Street SE.** The way that Mr. Welp has cared for the place in the past does not do much a prediction for the future. Why would he need more time? You might want to ask him as to why it is vacant now? I don't think that that was his decision. I think the decision was made for him.

Commissioner Hohmann: Mr. Welp, has this been vacant for nine months?

Joe Welp: No

Commissioner Hohmann: How long?

Joe Welp: March 1st or April 1st, maybe it was May 1st – recently. I bought it in 2000. I had it vacant for several months while I was working on it, because it needed a lot of work.

Commissioner Hohmann: Vacant for several months. Referred to the packet by Martin, a notice of violation dated March 3, 2003. In this period that it has been vacant, have you been working on it? Making improvements?

Joe Welp: I have already made the improvements on it.

Commissioner Hohmann: The improvements were made but we have no record of any permits?

Joe Welp: The only permits I pulled were the egress windows in the basement and I needed to pull an electrical permit for the basement unit. I finished the basement and I kept the basement empty, so I did not pull the electrical permits on it.

President Martin: Closed the public hearing.

Commissioner Lashomb: Mr. Voll, if we were to extend this, what would your recommendation be about the time frame?

Jim Voll: If you were to extend it out, I would lean on Neils's advice, but I am not sure how we would guarantee that we would get a letter waiving his rights? It seems to me you would almost have to have that in writing before you extend it, because if we don't get the letter it will be approved by default. I am always willing to work with people and I do think you would want to set a time period, so these folks don't have to keep coming downtown. We have to give people due process and give them an opportunity to do things, but I can tell you since I have received this application they have submitted nothing. I had to get the mailing labels myself, so I am not so sure that I am confident that I will get anything, but if that is your choice I am willing to work with them. I would just set a date that these people would know that they would have another hearing, so they don't have to keep coming downtown.

President Martin: Commissioner Lashomb, one of the issues we have to think about is what they are applying for is not considered appropriate by staff or by the neighborhood. What the applicant has testified to is that he actually would prefer to turn this building into a condominium, and he doesn't need anything from us to do that.

Commissioner Lashomb: Well, if that is the case, it doesn't make any sense to extend the time limit.

Jim Voll: I would like to clarify though, if the applicant does want to make a four unit condominium building, then he would need something from us or a rezoning. He only has R2B zoning, it would not allow four units.

Commissioner Lashomb: He would have to come back and reapply, he would start the process over and have a 60-day window. What I was trying to do is fish around to see if we ought to do a test vote to see whether people wanted to continue this and the sense that I get is that they don't so I am not going to propose that.

Commissioner Hohmann: I am looking at the notice of violation from Regulatory Services and they state very clearly there that they have not sufficient evidence to conclude non-conforming rights exist. I think based on that and what we have heard today, I would like to move approval based on the staff recommendation. Deny.

President Martin: So you are moving that staff recommendation for both 19 and 20

Commissioner Hohmann: Yes.

President Martin: Further Discussion?

Commissioner Schiff: I am just going to say that this application is just so far from being complete or being active – start again, collect your data and put together a real application. I am not even seeing a good faith effort here and trying to take up staff's time and put this forward to us, so I don't see any reason why we would continue. If you were $\frac{3}{4}$ the way there I could see continuing to get the rest of the data, but this isn't even close.

President Martin: The motion is to approve the staff recommendation for items 19 and 20, which is to deny both applications all those in favor say Aye, none opposed.